

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Requesting final approval of amendments to Chapter 13-234, Hawaii Administrative Rules, as they relate to cruise ship fee increases and requesting authorization to submit the approved rule to the Governor for final adoption.

BACKGROUND:

The fees rules packet that was first reviewed by the Board of Land and Natural Resources (BLNR) on June 22, 2001, included rules that would affect both recreational and commercial fee increases. The BLNR approved the rules, which were then forwarded to the Governor for permission to proceed to public hearings. Both recreational and commercial rule amendments proceeded to ten public hearings held on October 5, 2002.

Subsequent to the public hearings, amendments to Chapter 13-234 were extracted and forwarded separately.

On April 22, 2005 these Chapter 13-234 amendments went before the BLNR for a second time.

The BLNR approved staff's recommendations to adopt the rules as submitted and grant approval to forward the rules to the Governor for final approval on the condition that, "Before the rules are forwarded to the Governor for final approval, the Division of Boating and Ocean Recreation shall provide the Board a report on their compliance with all Federal laws, specifically the federal Rivers and Harbors Appropriation Act of 1884 so the Board can be assured the Department is in compliance with regards to the projected revenues and how the revenues are used".

Thus the Department of Land and Natural Resources (DLNR) requested the advise of the Attorney General to comply with the BLNR's request. The Attorney General advised the DLNR that HAR 13-234-26(b) as written conflicted with federal law, which does not allow differences in fees between intra-state, inter-state or international commerce.

Thus, HAR 13-234-26(b) has been amended so that passenger vessels engaged in intra-state, inter-state and international commerce all pay the same \$1.40 user fee each way. All other rule amendments which were approved by the BLNR at the April 22, 2005 BLNR meeting remain the same.

ITEM J-2

The Attorney General further advised the DLNR that this change does not require additional public hearings and that the DLNR, with BLNR approval, can forward the rule amendments to the Governor for final approval.

Based on the BLNR's request, the DLNR evaluated the various personnel and other expenses associated with servicing the cruise ships. Below is a break down of various activities undertaken by DOBOR and DOCARE on an average cruise ship call at its two facilities (Lahaina, Maui and Kailua-Kona, Hawaii) currently servicing cruise ships.

STAFF

District Manager (1)	Coordinates operations both onsite and administratively
Enforcement Officer (2/3)	Security
Harbor Agent (2)	Booking, scheduling, pier operations, log sheets, coordinates security, traffic control, ground transportation passes, and parking passes
Clerk V (1)	Record keeping, processing of passes
Accountant Clerk (1)	Invoices, payment entries, record keeping, ground transportation passes, and pier passes
Building Maintenance Worker (1)	Repairs to fenders, mooring balls, swim buoys and lanes, and comfort stations
General Laborer (1)	Clean pier, restrooms

WATER PATROL

Enforcement Officer (2) – Security
Boat/Fuel costs

MAINTENANCE

General repair and maintenance to facilities used by tenders, docks, restrooms, parking area

REST ROOMS

Janitorial Service – Extra cleaning of restrooms

PARKING CONTROL

Parking Concession/Service - Access control and parking for piers

It is DLNR's understanding that the fees charged to the cruise ships do not have to be used by DLNR as a literal dollar for dollar match. Instead, the DLNR must assure the fees are reasonable and allocation of revenues cover all costs associated with cruise ship operations by DLNR staff and resources. We believe the proposed fee package address this.

RECOMMENDATION: That the Board of Land and Natural Resources:

1. Adopt the rules as submitted.
2. Grant approval to forward amendments to Chapter 13-234, Hawaii Administrative Rules to the Governor for final approval.

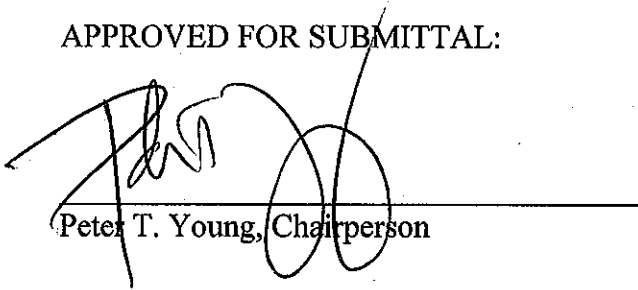
Respectfully Submitted,



Ed Underwood

Administrator, Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

Department of Land and Natural Resources

Amendments to Chapter 13-234, Hawaii Administrative Rules

Section 13-234-26, Hawaii Administrative Rules, is amended to read as follows:

§13-234-26 Passenger user fees. (a) Notwithstanding the provisions of section 13-234-25, [Any] passenger vessel or cruise vessel [which is used for private gain and does] companies engaged in commercial activities that do not [have a valid mooring permit or] possess a commercial activity permit and [which uses] whose vessels enter a state [small boat harbors property or facilities] boating facility for purposes of embarking or disembarking passengers shall be required to pay the following user fees in addition to any other fees required by this chapter:

<u>Categories</u>	<u>One way user fee per passenger</u>
(1) [Per passenger] <u>Passengers (includes in transit)[--]</u> embarking to or from shore to ship[.....] <u>within a state boating facility.</u>	\$2.00

[(2) Passengers in transit on a vessel on a continuous trip whose point of origin and termination is a state small boat harbor, a total of disembarking and embarking at each port per passenger..... \$1.50

(3) Passengers embarking and disembarking on occasional and infrequent use on special charter when approved in advance of voyage as provided in section 13-231-57(c)(3)\$1.50]

(b) Any passenger vessel or cruise vessel using a [dock, pier or wharf in a state small boat harbor] state boating facility for disembarking and embarking passengers by means of any boat or lighter while hove to or moored offshore, shall pay a user fee per passenger, which shall be inclusive of all other fees required by this chapter, for disembarking and embarking at each [small boat harbor] state boating facility as follows:

<u>Categories</u>	<u>User fee each way</u>
Passenger vessels <u>or cruise vessels</u> engaging [only] in [inter-island] <u>intra-state, international, or inter-state commerce[:.....]</u>	[\$.30] <u>\$1.40</u>
[Passenger vessels engaging in international or inter-state commerce:.....]	[\$1]

(c) Vessels operated by a federal or state agency [are] shall be exempt from the provisions of this subsection.

[(c)] (d) [A report] The ship's agent shall [be filed] file a tally of the number of passengers based on the passenger manifest with the department on a form [acceptable to] provided by the department. The tally shall be submitted within thirty days after the date of embarking or disembarking of passengers over state boating facilities and the charges due shall be remitted along with the report.

[(d)] (e) Commercial vessel operators who have been issued a certificate of public convenience in accordance with section 200-9, HRS, shall be exempt from the provisions of this section. [Eff 2/24/94 am and comp] (Auth: HRS 200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS 200-2, 200-3, 200-4, 200-10, 200-22, 200-24)